**FARAD CONTINUATION SHEET NO.**
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE SIDE**
**NAGPUR BENCH, NAGPUR**

Writ Petition No. 577/2005

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| Appeal<br>Application No.<br>Writ petition | District :<br>of 200 |
| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |

Shri. P. V. Vaidya, Adv. for petitioner.

**CORAM : B.R. Gavai, J.**
**DATED : September 14, 2006.**

By way of present petition, the petitioner challenges the order passed by the learned 6th Joint Civil Judge, Jr. Dn., Nagupr, dated 26th November, 2004, vide which the petitioner has been directed to value the suit properly and pay the deficit court fees within 15 days from the date of the order.

The petitioner-Society filed a suit contending that it had purchased certain property by a registered sale deed executed by the respondent nos. 2 and 3. It is alleged that the petitioner-Society demarcated the plots and allotted to its various members, and that after the execution of the sale deeds, the entire land has been handed over in possession of the petitioner. The suit for

permanent and mandatory injunction was valued at Rs. 600/-. The respondent no.1 filed an objection under Section 9A of Code of Civil Procedure, contending that the suit was undervalued. It was further contended that an issue of ownership was involved. It was also contended that since the valuation of the property in question was Rs. 2 lakh, the Court of Civil Judge, Jr. Dn., had no jurisdiction to try the suit. The learned trial Court found that the issue of ownership was involved in the suit. Relying on the judgment of the Apex Court in the case of **Corporation of City of Bungalore Vs. M. Papaiah and another** reported in **AIR 1989 Supreme Court 1809**, it was held that though in the relief paras of the plaint, the relief that was sought was for perpetual injunction restraining the defendants from interfering with the possession, the injunction that was sought was on the basis of the ownership and as such, the petitioner was liable to pay the necessary court fees. In the present case also, it can be seen that the plaintiff claims possession on the basis of the ownership by virtue of execution of sale deeds in its favour.

In that view of the matter, no

perversity could be found in the approach adopted by the learned trial Court so as to warrant interference by this Court in exercise of its extraordinary jurisdiction under Article 226 and 227 of the Constitution of India. Hence rejected.

It is made clear that time of 15 days which was granted by the learned trial Court for payment of deficit court fees, shall commence from the date of this order.

Since the suit is of the year 1998, the learned trial Court is directed to expedite the suit and dispose of the same within a period of one year.

**JUDGE**

RMP